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In re Application of
Faubel et al.
Application No.: 10/527,676
PCT No.: PCT/EP03/10164
Int. Filing Date: 12 September 2003
Priority Date: 13 September 2002
Attorney Docket No.: 46955.22
For: Liquid Trap For Collecting
Liquids In A Vacuum Device

DECISION

This is in response to the submission under 37 CFR 1.497(d) filed on 04 May 2006.

DISCUSSION

In a decision mailed on 17 March 2006, the declaration filed on 16 December 2005 was not accepted, without prejudice, because

The instant "Response..." is accompanied by the surcharge under 37 CFR 1.492(h) and by a signed declaration. Inspection of the declaration reveals that it nominates three joint inventors (Bernd Abel, Jens Assman and Eugene Lugovoi) who are not named in the published international application. The application file currently contains no evidence suggesting that any of said three inventors were added to the international application pursuant to PCT Rule 92*bis*. Accordingly, it would not be appropriate to accept the declaration on the basis of the present record. Counsel may wish to entertain the possibility of filing a submission pursuant to PCT Rule 1.497(d) to resolve this matter.

The instant response alludes to 37 CFR 1.497(d) in requesting acceptance of the declaration. A declaration filed under 37 CFR 1.497 (d) must be by the actual inventor or inventors as required under 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47. The declaration must be accompanied by (1) a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part, (2) the processing fee set forth in 37 CFR 1.17; and (3) if an assignment has been executed by any of the original named inventors, the written consent of the assignee (*See* 37 CFR 3.73(b)). *See* Section 201.03 of the Manual of Patent Examining Procedure (M.P.E.P.).

Regarding requirement (1), applicants have provided an appropriate statement signed by Bernd Abel, Jens Assman and Eugene Lugovoi.

Regarding requirement (2), the required processing fee was paid on 04 May 2006.

Regarding requirement (3), the instant correspondence includes a copy of an assignment document executed on behalf of two assignees, Max-Planck-Gesellschaft Zur Foerderung Der Wissenschaften ("Max Planck") and Georg-August-Universitat Gottingen ("Georg-August") by Manfred Faubel, Ales Charvat, Jurgen Troe, Bernd Abel, Jens Assman and Eugene Lugovoi, as well as an indication of the reel and frame numbers where said assignment has been recorded in the USPTO. Also present is a "Statement of Consent by Assignee under 37 CFR 1.48(a)(5)" purporting to show the consent to the addition of Bernd Abel, Jens Assman and Eugene Lugovoi as inventors by assignee Max Planck. This statement is signed on behalf of Max Planck by Christa Herzog in the capacity of "Head of Patent Department." There is no statement that Ms. Herzog enjoys the authority to sign on behalf of the assignee, and the position of "Head of Patent Department" does not establish apparent authority to sign because an individual with this title would not ordinarily be expected to enjoy such authority to act on behalf of an organization. Meanwhile, the instant correspondence does not include any document purporting to evidence the consent of the other assignee, Georg-August, to the proposed change in inventorship. For all of these reasons, it would not be appropriate on the basis of the present record to conclude that requirement (3) has been satisfied.

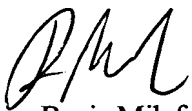
It is noted that counsel refers to copies of a German language "Antrag gemäs Regel 92bisPCT" and to a sheet printed "from the esp@cenet database" as evidence that applicants attempted to record the change in inventorship pursuant to Rule 92bis. However, counsel has not provided a translation of the "Antrag..." and, in any event, this document at most establishes that applicants intended to request the recordation of a change. Meanwhile, the esp@cenet printout suggests that Abel, Assman and Lugovoi are recorded as inventors in the esp@cenet database, but this does not demonstrate that they have been recorded as inventors in the international application pursuant to Rule 92bis.

CONCLUSION

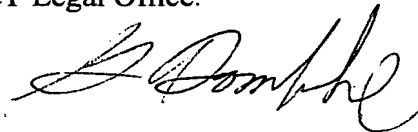
The declaration is **NOT ACCEPTED** under 37 CFR 1.497(d), without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Failure to timely reply will result in **ABANDONMENT** of this application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.497(d)". No additional processing fee is required.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the PCT Legal Office.



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